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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

BUCK RAY ABNEY,

Plaintiff and Respondent.

E061859

(Super.Ct.No. FVI1401904)

OPINION

APPEAL from the Superior Court of San Bernardino County. John M. Tomberlin, Judge. Affirmed.

Kenneth J. Sargoy, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Buck Ray Abney was charged by information with possession of a controlled substance. (Health & Saf. Code, § 11377, subd. (a), count 1.)

It was also alleged that he had one prior strike conviction (Pen. Code, §§ 1170.12,

subds. (a)-(d) & 667, subds. (b)-(i))<sup>1</sup> and two prior prison convictions (§ 667.5, subd. (b)). A jury found defendant guilty of count 1, and he admitted the prior conviction allegations. A court sentenced defendant to two years eight months on count 1. The court imposed two years on the prior prisons, but stayed those terms.

Defendant filed a timely notice of appeal. The trial court subsequently granted defendant's motion for resentencing and reduced his conviction to a misdemeanor, pursuant to section 1170.18. The court also struck the prison priors. We affirm.

### FACTUAL BACKGROUND

Robert Monge was a parole agent assigned to check on defendant. On May 22, 2014, Monge went to defendant's apartment. He knocked on the door and announced himself as "state parole." He could hear something moving right behind the door inside. After about two or three minutes, the door opened. Agent Monge noticed that there was a large television and a piece of furniture up against the door. Defendant and another male were inside the apartment. He asked them to step outside and instructed them to wait there. Agent Monge observed that defendant was "excited" and was exhibiting "bizarre behavior." Monge asked what took so long to open the door, and defendant said he had barricaded the front door. Because of defendant's strange behavior, Monge placed handcuffs on him. Agent Monge advised defendant that he was putting him in handcuffs for his own safety, as well as for Monge's safety. Monge did a cursory search of the

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<sup>1</sup> All further statutory references will be to the Penal Code, unless otherwise noted.

apartment to clear it. Meanwhile, the other male left. Monge then searched defendant and found a tin container inside a plastic baggie, in his left front pocket. He removed the tin container out of defendant's pocket and observed what appeared to be methamphetamine in the container. Monge asked defendant if it was methamphetamine. Defendant confirmed that it was methamphetamine and said it belonged to him. Monge took the handcuffs off of defendant and left him to go and search for the other male. After locating the other male, who was also a parolee, Monge returned to defendant's apartment and defendant was arrested.

### DISCUSSION

Defendant appealed and, upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and a few potential arguable issues: (1) whether the court erred in admitting defendant's statement to Agent Monge that the methamphetamine belonged to him, in violation of his *Miranda*<sup>2</sup> rights; and 2) whether defense counsel's error in referring to Monge as a parole agent fell below an "objective standard of reasonableness." Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has not done.

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<sup>2</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have conducted an independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.